

HOUSE BILL 2875

By Camper

AN ACT to amend Tennessee Code Annotated, Title 41,  
relative to pregnant women who are incarcerated.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 41, Chapter 51, is amended by adding  
the following new part:

**41-51-201.**

As used in this part:

(1) "Correctional institution" means a facility under the authority of this state, or a county or municipal government, that has the power to detain or restrain, or both, a person under the laws of this state;

(2) "Corrections official" means the official designated as responsible for oversight of a correctional institution, or the official's designee;

(3) "Detainee" includes a person detained under the immigration laws of the United States at a correctional institution;

(4) "Extraordinary circumstance" means that the prisoner or detainee presents a substantial flight risk or some other extraordinary medical or security circumstance;

(5) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix;

(6) "Postpartum" means the six-week period, or longer as determined by the healthcare professional responsible for the prisoner's or detainee's health care, immediately following delivery, stillbirth, miscarriage, ectopic pregnancy, or other non-live birth outcome;

(7) "Prisoner" means a person incarcerated or detained in a correctional institution who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or a diversionary program; and

(8) "Restraint" means a physical restraint or mechanical device used to control the movement of a prisoner's or detainee's body or limbs, or both, including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security or tether chain, a convex shield, or a restraint or safety chair.

**41-51-202.**

(a) A correctional institution shall not use restraints on a prisoner or detainee known to be pregnant, including during labor, transport to a medical facility, delivery, and postpartum, unless the corrections official makes an individualized determination that the prisoner or detainee presents an extraordinary circumstance that dictates the use of restraints to ensure the safety and security of the prisoner or detainee, the staff of the correctional institution or medical facility, other prisoners or detainees, or the public, except that:

(1) If the doctor, nurse, emergency medical technician, or other health professional treating the prisoner or detainee requests that restraints not be used, the corrections officer accompanying the prisoner or detainee shall immediately remove all restraints; and

(2) Under no circumstances may leg or waist restraints be used on a prisoner or detainee who is in labor or delivery, whether in a correctional institution, in a medical facility, or in transport to a medical facility.

(b) If restraints are used on a prisoner or detainee pursuant to subsection (a):

(1) The type of restraint applied must be the least restrictive type and the application of the restraint must be done in the least restrictive manner necessary;

(2) Within seventy-two (72) hours, the corrections official shall submit written findings to the head of the correctional institution as to the extraordinary circumstance that dictated the use of the restraints to ensure the safety and security of the prisoner or detainee, the staff of the correctional institution or medical facility, other prisoners or detainees, or the public. The written findings must describe the facts and circumstances surrounding the use of restraints, including:

(A) The reasoning upon which the determination to use restraints was made;

(B) The details of the use of restraints, including the type of restraints used and length of time during which restraints were used;

(C) The names of the medical professionals caring for the prisoner or detainee; and

(D) All resulting physical effects on the prisoner that are observed by or known to the corrections official; and

(3) No later than thirty (30) days before the end of each fiscal year, the commissioner of corrections shall submit a written report to the members of the state government committee of the house of representatives, the state and local government committee of the senate, and the corrections subcommittee of the house of representatives on the use of restraints on incarcerated women who are pregnant or going through postpartum. This report must include an account of every instance of prisoner restraints used in accordance with this section. The

written report must state the date, time, location, and rationale for each instance in which restraints are used. The written report must not contain information identifying a prisoner or detainee in violation of § 10-7-504 without the prisoner's or detainee's prior written consent.

(c) A searchable database that is publicly available must be created that includes an account of every instance of prisoner restraints used in accordance with this section, including the date, time, location, and rationale for each instance in which restraints are used, the name of the corrections official responsible for restraining the pregnant prisoner or detainee, and the name of the correctional institution where the pregnant prisoner or detainee is housed. The database must not contain information identifying a prisoner or detainee in violation of § 10-7-504 without the prisoner's or detainee's prior written consent.

(d) The comptroller of the treasury shall audit the use of restraints on pregnant prisoners and detainees and research and report on conditions for pregnant prisoners and detainees in correctional institutions throughout this state every two (2) years. The department of correction and the wardens of correctional institutions shall, as necessary, provide documentation and support to assist the comptroller of the treasury. The audit must include:

(1) The number of births by pregnant women who are in the custody of a correctional institution;

(2) An account of every instance when a pregnant prisoner or detainee was detained in accordance with this section, including the date, time, location, and rationale for each instance in which restraints were used;

(3) A review of compliance with this section and the reporting requirements thereunder; and

(4) Recommendations for reducing the use of restraints on pregnant prisoners and detainees and ensuring their safety and the safety of the infant consistent with the intent and language of this section.

(e) This part does not apply if the prisoner or detainee is kept in the hospital for an extended period of time for other reasons not associated with the birth of their child or children.

(f) A corrections official shall not be present in the room during a pregnant prisoner's or detainee's labor or childbirth.

(g) The commissioner of the department of correction and administrator of each county correctional institution shall require annual training of staff members who transport or supervise female prisoners on the requirements of this part.

(h) All prisoners and detainees potentially affected by this part must be advised in a separate, clear, and concise writing of the requirements of this part and of § 41-21-227(h) upon admission to the correctional institution and when correctional officials know that a prisoner or detainee is pregnant.

SECTION 2. This act takes effect July 1, 2022, the public welfare requiring it.